IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 21282 of 2007(H)

AGAINST THE ORDER IN EP.13/04 IN
AP.74/1999 of D.C. & SESSIONS COURT, ERNAKULAM

.....

PETITIONER:

M.S.ANTONY, S/O. M.K.SEBASTIAN,
MATTAMMAL HOUSE, BMC POST, COCHIN-682 021.

BY ADV. SRI.M.P.SREEKRISHNAN
SRI.V.ARUN

RESPONDENTS:

M/S. MAHARASHTRA APEX CORPORATION LTD.,
MANIPAL, REPRESENTED BY ITS PRINCIPAL OFFICER &
POWER OF ATTORNEY HOLDER SRI. PREMAN T.K.,
BRANCH MANAGER, ERNAKULAM BRANCH OFFICE,
ERNAKULAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 21282 OF 2007 H

Dated this the 11th July, 2007.

JUDGMENT

This writ petition is filed seeking a direction to the District Court, Ernakulam to keep in abeyance all further proceedings in E.P.13/04 in A.P.74/99 for a period of three months in view of the pendency of A.S.12/06 before the District Court, Uduppi.

2. Heard learned counsel for the writ petitioner.

3. It is submitted that against the ex parte award passed the present writ petitioner has filed an arbitration suit under Section 34 of the Arbitration & Conciliation Act 1996 to set aside the award with a petition to condone the delay in filing the same and it is pending before the District Court Uduppi. Section 36 of the Arbitration Act lays down the principle for enforcement of the award. As per the said Section where the time for making an application to set aside the arbitral award under Section 34 has expired or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court. Section 34 of the Arbitration act enables the party to file an application for setting aside the award on the grounds mentioned therein and the said

Section also empowers the court to condone the delay, if any, in filing the application to set aside the award. The present writ petitioner has resorted to a remedy under Section 34 and so it is desirable that some time is given for pursuing his remedies under the said proceedings. He could not obtain an interim order because of the pendency of the delay condonation application. In the decision reported in **Khaleel Ahmed Dakhani v. Hatti Gold Mines Co.Ltd.** (AIR 2006 S.C.1926) the Apex Court has also taken a view that when an application for setting aside the arbitral award is pending it is not correct to enforce the award. So, taking into consideration these broad principles, I am inclined to grant a stay for a period of two months from today so as to enable the writ petitioner to move the court at Uduppi for speedy disposal of the delay condonation application and for obtaining an interim order, if law permits. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

jj